



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF THE TRIAL COURT  
John Adams Courthouse  
One Pemberton Square, Floor 1M  
Boston, Massachusetts 02108  
617-878-0203

Paula M. Carey  
Chief Justice of the Trial Court

May 3, 2019

District Attorney Michael W. Morrissey  
Office of the Norfolk County District Attorney  
45 Shawmut Road  
Canton, MA 02021

Dear District Attorney Morrissey:

Thank you for your letter of May 1, 2019, regarding the Sentencing Commission. I appreciate your communication and, as always welcome your input. As you know, we have had numerous conversations about this very issue. I only recently became aware of your letter to the State Auditor. I see that you copied a number of people with that letter but noticeably absent was the Trial Court, specifically me.

In previous correspondence on this issue (specifically, your letter dated May 30, 2018), you referenced that you were writing as President of the District Attorney's Association, expressing the views of the Association. By contrast, it appears that in sending the most recent letter you are expressing your own views, which you indicate are joined in on by "a majority" of district attorneys. From this, I infer that the Association is not taking a position on the three requests you have made. Please advise me if this is not correct.

As you know, the Sentencing Commission is not an arm of the Trial Court, nor is not under the control of the Trial Court. Rather, pursuant to G. L. c. 211E, §.1, the Sentencing Commission is "an independent commission in the judicial branch of the commonwealth," with nine voting members appointed by the Governor, including three judges, two assistant district attorneys, and an assistant attorney general. Judges who serve on the Sentencing Commission act not as designees of the Trial Court, but in the exercise of their independent judgment.

As you note, G. L. c. 211, §. 3(a)(1), directs the Sentencing Commission, "by affirmative vote of at least six members," to "recommend sentencing guidelines, which shall take effect only if enacted into law." Pursuant to §.3(c), enactment into law would have the effect of authorizing judges to depart from otherwise applicable statutory mandatory minimum sentences. See *Commonwealth v. Laltaprasad*, 475 Mass. 692, 695-696 (2016); *Commonwealth v. Russo*, 421 Mass. 317, 322-323 (1995). As those

cases establish, without such enactment, judges are bound by statutory mandatory minimum sentences regardless of any guideline recommendations.

In 1996, the original Sentencing Commission adopted recommended sentencing guidelines, which it submitted to the Legislature, but which the Legislature did not enact. From that time until November 2017, the guidelines recommended by the original Sentencing Commission functioned as advisory guidelines, available for judges to consult in their discretion. Many judges made a regular practice of consulting those guidelines, in an effort to achieve consistency and fairness in sentencing, such that like offenses and like offenders would be treated alike, see G. L. c. 211E, s. 2(4), although judges recognized that any statutory mandates would prevail over any conflicting guidelines recommendation. During the same period, and for the same reasons, many attorneys on both sides, either on their own initiative or at the direction of judges, made a practice of referencing those guidelines in their sentencing recommendations.

In 2016, at the direction of Chief Justice Gants, each Trial Court Department with criminal jurisdiction adopted principles for best practices in individualized evidence-based sentencing; those principles are published on the Trial Court website, [www.mass.gov/info-details/sentencing-best-practices](http://www.mass.gov/info-details/sentencing-best-practices). In the Principle No. 3 of the Superior Court best practices recommends that judges consider the Massachusetts Sentencing Guidelines, among other factors and sources of information.

In 2014, as you know, the Governor appointed new members of the Sentencing Commission, and the Commission undertook a process to consider revising and updating the guidelines that were then nearly twenty years old. That process culminated in the issuance of a report, dated November 2017, entitled “Advisory Sentencing Guidelines.” It is my understanding that six of the nine voting members of the Commission voted to issue the report; the two assistant district attorneys voted against; and the assistant attorney general abstained. In May 2018, some six months after issuance of the Sentencing Commission’s report, the Massachusetts District Attorneys Association issued a “Minority Report.”

Since then, both of those documents have been published and widely disseminated, including to those judges who attended a seminar conducted by the Flaschner Judicial Institute, a private organization, in June 2018, to acquaint judges with these new advisory guidelines. Your letter also references a recent educational program for attorneys conducted by the Social Law Library, at which judge presenters advised attorneys to cite the new advisory guidelines. Such educational programs, as you know, are not under the auspices of the Trial Court. Presenters at such programs, including judges, are free to and do express their own views.

In formulating a criminal disposition, judges consider a variety of factors bearing on the defendant and the offense of conviction, to include but certainly not limited to advisory guidelines. This has been a practice for more than twenty years, and judges understand that the guidelines are intended to guide, but not to compel, a judge in determining an appropriate sentence. To the extent that your letter reflects disagreement on the part of some of the District Attorneys with the substance of the advice provided in

the Sentencing Commission's report, the proper forum to which to direct those views would be the Sentencing Commission itself. As you know, the Governor has recently appointed new judicial members of the Commission, including a new chair. I am confident that the Commission will be open to consideration of your views, along with those of all others with interest in the important and complex topic of fair and just sentencing.

Sincerely,



Paula M. Carey  
Chief Justice of the Trial Court

cc: Governor Charles D. Baker Jr.  
Attorney General Maura Healey  
State Auditor Susan M. Bump  
Chief Justice Ralph D. Gants  
Chief Justice Judith Fabricant  
Chief Justice Paul C. Dawley  
Chief Justice Amy L. Nechtem  
Judge Jeffrey A. Locke, Sentencing Commission Chair  
Probation Commissioner Edward J. Dolan  
Senate President Karen E. Spilka  
Speaker of the House Robert A. DeLeo  
Senate Judiciary Committee Chair James B. Eldridge  
House Judiciary Committee Chair Claire D. Cronin